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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,299	11/24/2003	William A. Hall	54173-44719	7067
21888	7590	10/06/2005	EXAMINER	
THOMPSON COBURN, LLP			HUYNH, LOUIS K	
ONE US BANK PLAZA			ART UNIT	
SUITE 3500			PAPER NUMBER	
ST LOUIS, MO 63101			3721	

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/721,299	HALL, WILLIAM A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Louis K. Huynh	3721	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings has been carefully review and they do show that the wall thickness at the tubular body first end, specifically the rim (38 or 94), is large than the wall thickness at the tubular body second end; therefore, the objection of the drawings is hereby withdrawn.

### ***Response to Arguments***

Applicant's arguments filed July 11, 2005 have been fully considered but they are not persuasive.

- Applicant contends that the pan (30) disclosed in the Peebles reference (US 5,964,365) is not equivalent to the claimed packaging. This is not found persuasive because the pan is a container that contains a product for transportation which meets the definition of packaging.
- Applicant further invokes paragraph 6<sup>th</sup> of article 35 U.S.C. 112 by amending claim 1 to recite “means plus function” and contends that the reference to Peebles (US 5,964,365) does not contain any suggestion of a food packaging closure apparatus having identity of the claimed function as claimed in claim 1; specifically, Peebles does not suggest a second end having means for attaching the body second end to packaging of a food product. This is not found persuasive because Peebles discloses a food packaging closure that includes a tubular body (20) having a vertical wall (42), which is equivalent to the claimed “means for attaching,” that attaches the second end of the tubular body (20) to the pan (30); see col. 3, lines 62-64.

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- Applicant further contends that the rejection of claim 6 is based on hindsight. This is not found persuasive because: 1) the packing closure apparatus disclosed in the Peeples reference must be formed by molding due to its particular shape as illustrated in FIGS. 5A & 5B; 2) the packing closure apparatus disclosed in the Peeples reference is for insulate the pan's contents while minimizing the food handler from the risk of scalding from spillage or contact with the pan (col. 1, lines 38-43); 3) the assignee of the Peeples patent is Igloo Product Corp. who is primarily manufacture thermal product from thermoplastic material; therefore, it would have been obvious to a skilled person in the art that the packing closure apparatus disclosed in the Peeples reference is molded from plastic.
- Applicant further contends that the rejection of claims 10 and 19 are also based on hindsight. This is not found persuasive because: 1) FIGS. 1 of the Peeples reference clearly show the rectangular pan (30) and thus the cross section of the tubular body (20) is rectangular; and 2) applicant admitted that pan is typically round (Remarks on page 10, lines 18-20) and thus it would have been obvious to a skilled person in the art, at the time of the invention, to have modified the packaging closure apparatus of Peeples by having provided the tubular body with a circular cross section in order to accommodate such typical round pans, as admitted by applicant.
- The prima-facie of anticipation and obviousness have been reasonably set forth and the rejection of claims 1-20 is hereby maintained and repeated as follows:

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 7-9, 11-14, 16-18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Peeples et al. (US 5,964,365).

With respect to Claims 1-5, Peeples discloses a food packaging closure including: a tubular body (20) and a lid (60); wherein the tubular body (20) includes a first open end defined by a ridge (24) that receives the lid (60), and a second open end defined by a vertical wall (42) that removably attaches to a pan (30) of food product (col. 3, lines 62-64), the first open end is larger than the second open end, and a hollow interior bore is defined between the first open end and the second open end.

With respect to Claims 7-9, the tubular body (20) includes a rim (24, 26) extending around the first open end and projecting outwardly from the tubular body; wherein the lid (60) having a lip (62) that engages the rim (24, 26) of the tubular body (20) and the lid is completely removable from the tubular body.

With respect to Claim 11, the tubular body (20) has a rectangular configuration (FIG. 1).

With respect to Claim 12, the tubular body (20) has a tapering configuration from the first open end to the second open end (FIG. 5A).

With respect to Claim 13, the wall thickness at the first end (lip 44) is larger than wall thickness at the second end (42) (FIGS 5A & 5B).

With respect to Claims 14, 16-18 and 20, Peeples discloses a method of preserving food product in food pan (30) including the step of: providing a rectangular tubular body (20) having a first open end defined by a ridge (24), a second open end defined by a vertical wall (42), and a hollow interior bore extending from the first open end to the second open end, positioning the second open end around the opening of the food pan (30), providing a lid (60), and removably attaching the lid (60) to the tubular body (20) (FIGS. 5A, 5B).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peeples et al. (US 5,964,365).

With respect to Claim 6, Peeples discloses a food packaging closure including: a tubular body (20) and a lid (60); wherein the tubular body (20) includes a first open end defined by a ridge (24) that removably receives the lid (60), and a second open end defined by a vertical wall (42) that is configured to removably attach to a pan (30) of food product (col. 3, lines 62-64). The closure of the Peeples meets all of applicant's claimed subject matter but lacks the specific teaching of the second open end being resilient. However, the configuration of the closure, as illustrated in FIGS 5A and 5B, has reveals that the closure must be molded and plastic is an obvious choice of material for molding into such configuration and for preventing the food

handler from the risk of scalding from spillage or contact with the food pan. Plastic material is known to be resilient and stretchable.

With respect to Claim 15, the closure of the Peeples meets all of applicant's claimed subject matter but lacks the specific teaching of the second open end being resilient. However, the configuration of the closure, as illustrated in FIGS 5A and 5B, has reveals that the closure must be molded and plastic is an obvious choice of material for molding into such configuration and for preventing the food handler from the risk of scalding from spillage or contact with the food pan. Plastic material is known to be resilient and stretchable.

6. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peeples et al. (US 5,964,365) in view of AAPA (Applicant Admitted Prior Art).

Peeples teaches that the closure is designed for the easy transport and storage of pans or dishes used primarily in the preparation, cooking and storage of foods; and it is well known that pans or dishes have a circular configuration and is admitted by AAPA in the Remarks filed 07/11/2005 on page 10, line 18-20; therefore it would have been obvious to an ordinary skilled person in the art, at the time the invention was made, to have modified the closure of Peeples by having shaped the closure with a circular configuration in order to accommodate circular pan, as admitted by AAPA.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

8. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

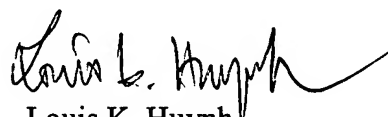
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is 571-272-4462. The examiner can normally be reached on M-F from 9:30AM to 5:00PM.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Louis K. Huynh  
Primary Examiner  
Art Unit 3721

October 02, 2005